

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SPECIALTY RING PRODUCTS, INC. : CIVIL ACTION
:
v. :
:
MHF, INC. AND :
WEST COAST-ACCUDYNE, INC. : NO. 01-2683

MEMORANDUM

Padova, J.

November , 2001

Plaintiff, a manufacturer of specialty rings for aircraft, has brought this action against MHF, Inc. ("MHF") and West Coast-Accudyne ("WCA") for breach of contract and breach of the implied warranties of merchantability and fitness for a particular purpose, arising out of its purchase of a radial ring roller designed by MHF and manufactured by WCA. Before the Court is Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. For the reasons which follow, the Motion is denied.

I. BACKGROUND

The Complaint alleges the following facts. Specialty Ring Products, Inc. ("Specialty Ring"), a Pennsylvania corporation, ordered engineering plans for an automated ring roller from MHF, a California corporation with its principal place of business in California, on July 10, 1998. On January 19, 1999, MHF presented Specialty Ring with a proposal for the manufacturing of the ring roller based upon the plans it had previously provided to Specialty Ring. Between January 19, 1999 and March 24, 1999, MHF advised

Specialty Ring that WCA, a California corporation with its principal place of business in California, would manufacture the ring roller based on MHF's design. On March 24, 1999, Specialty Ring issued a purchase order for the purchase of the ring roller, accepting MHF's January 19, 1999 proposal, for delivery within nine months. On May 10, 2000, Specialty Ring was informed that the ring roller was completed and ready for testing. Specialty Ring sent three employees to WCA's California facility to inspect the ring roller which could not properly forge rings. After unsuccessfully trying to fix the ring roller, WCA claimed that the problem was with the test site and suggested that the ring roller be shipped to Specialty Ring's facility in Bucks County, Pennsylvania. Specialty Ring received the ring roller on September 6, 2000. It still did not work properly. WCA sent employees to Specialty Ring's Bucks County facility to repair the ring roller in October 2000, December 2000, January 2001 and March 2001 without success.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 4(e), a federal court may exercise personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state. Pennzoil Prods. Co. v. Colelli & Assocs., 149 F.3d 197, 200 (3d Cir. 1998) (citation omitted); Fed. R. Civ. P. 4(e). Pennsylvania's long arm statute authorizes exercise of

jurisdiction over a nonresident person "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b) (West Supp. 2000); Pennzoil, 149 F.3d at 200. In evaluating whether an exercise of personal jurisdiction is constitutional, a court first determines whether the defendant's contacts with the forum state are sufficient to support general personal jurisdiction. Pennzoil, 149 F.3d at 200. General jurisdiction exists where a nonresident's contacts with the forum are "continuous and substantial," and permits the court to exercise jurisdiction "regardless of whether the subject matter of the cause of action has any connection to the forum." Id.

In the absence of general jurisdiction, a court looks to whether the requirements of specific personal jurisdiction are met. Specific jurisdiction exists where the plaintiff's claim "is related to or arises out of the defendant's contacts with the forum." Id. at 201 (citations omitted). The analysis of specific jurisdiction involves two inquiries, the first mandatory and the second discretionary: (1) whether the defendant had minimum contacts with the forum such that it would have "reasonably anticipate[d] being haled into court there," id. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)); and (2) whether "the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" Id. (citations omitted). Although the latter standard is discretionary, the Third Circuit

Court of Appeals has "generally chosen to engage in this second tier of analysis in determining questions of personal jurisdiction." Id.

"A finding of minimum contacts demands the demonstration of 'some act by which the defendant purposely avail[ed] itself of the privilege of conducting business within the forum State, thus invoking the protection and benefits of its laws.'" Id. at 203 (citations omitted). The court also takes into account "the relationship among the forum, the defendant and the litigation." Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The Supreme Court has provided guidance in analyzing minimum contacts in a contract matter:

[W]ith respect to interstate contractual obligations, we have emphasized that parties who 'reach out beyond one state and create continuing relationships and obligations with citizens of another state' are subject to regulation and sanctions in the other State for the consequences of their activities [W]here the defendant 'deliberately' has engaged in significant activity within a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's law it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 1222 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985) (citations omitted)). The plaintiff bears the burden

of coming forward with facts sufficient to establish the existence of minimum contacts. Id. at 1223.

To evaluate the "fair play and substantial justice" prong of the standard for specific personal jurisdiction, a court applies the following "fairness factors": "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." Pennzoil, 149 F.3d at 205-206 (citations omitted). At this point in the analysis, the defendant carries the burden. See Farina, 960 F.2d at 1226 ("[O]nce the plaintiff has made a prima facie case for jurisdiction based upon minimum contacts, the burden falls upon the defendant to show that the assertion of jurisdiction is unconstitutional. This burden is met when the defendant demonstrates to the court that factors are present that make the exercise of jurisdiction unreasonable.") (emphasis in original).

III. DISCUSSION

Defendants move to dismiss on the basis that they are California corporations which do not regularly do business in Pennsylvania and do not have sufficient contacts with Pennsylvania to be haled into court here. Although Plaintiff has the burden of making a prima facie case that personal jurisdiction over both

Defendants is appropriate in Pennsylvania, Plaintiff has not submitted its own affidavits in support of jurisdiction and relies on the affidavits submitted by the Presidents of both Defendants.

Melvin H. Francey, President of MHF, stated in his affidavit that, at Plaintiff's request, MHF submitted a preliminary design for the ring roller to Plaintiff in Pennsylvania by phone and fax and in person to Plaintiff's representative who traveled to California. (Francey Aff. ¶ 4.) Plaintiff then submitted a purchase order to MHF for the preliminary engineering for the ring roller. (Francey Aff. ¶ 5.) Francey visited Plaintiff's Pennsylvania facility at Plaintiff's request prior to Plaintiff ordering the ring roller. (Francey Aff. at ¶ 7.) Francey also traveled to Plaintiff's Pennsylvania Facility with George Schofhauser and Bruce Reichenfeld of West Coast Accudyne to conduct a design review meeting. (Francey Aff. ¶ 8.) MHF has never owned, used or possessed real property in Pennsylvania and has had only sporadic business contacts with Pennsylvania over the last seventeen years. (Francey Aff. ¶ 11-13.)

George F. Schofhauser, President of WCA, stated in his affidavit that WCA manufactured the ring roller for Plaintiff in its facility in California. (Schofhauser Aff. at ¶ 8.) WCA submitted a proposal to Plaintiff based upon the designs drafted by MHF. (Schofhauser Aff. at ¶ 5.) Plaintiff then issued a purchase order to WCA to manufacture the ring roller in California in

accordance with MHF's design. (Schofhauser Aff. at ¶ 6.) After the purchase order was issued, Schofhauser, Bruce Reichenfeld, Engineering Manager of WCA, and Francey, traveled to Plaintiff's Bucks County facility for a design review meeting where they discussed the location of the ring roller, the location of its control panel, and the foundation of Plaintiff's facility, and reviewed the design of the machine. (Schofhauser Aff. ¶ 7.) After the ring roller was manufactured, representatives of Plaintiff traveled to WCA's California facility to inspect it. (Schofhauser Aff. ¶ 9.) The ring roller was then disassembled for shipment to Pennsylvania; Plaintiff was responsible for shipment and reassembly at the instruction of WCA. (Schofhauser Aff. ¶ 10-11.) After Plaintiff reassembled the ring roller, Bruce Reichenfeld traveled to Pennsylvania to check the reassembly and provide training. (Schofhauser Aff. ¶ 11.) WCA subsequently had mail and telephone contacts with Plaintiff concerning problems with the operation of the ring roller. (Schofhauser Aff. ¶ 12.) A representative of WCA then made three separate trips to Plaintiff's Pennsylvania facility to make alterations to the ring roller. (Schofhauser Aff. ¶ 12.) WCA has never owned, used or possessed real property in Pennsylvania and has had only sporadic commercial contacts with Pennsylvania in the past. (Schofhauser Aff. ¶ 14-17.)

A. General Jurisdiction

Defendants argue that their overall contacts with Pennsylvania are neither continuous nor systematic and do not subject them to general jurisdiction in this Commonwealth. Plaintiff does not argue that this Court has general personal jurisdiction over either Defendant. The Court finds that Defendants' contacts with this Commonwealth are not sufficiently continuous or systematic to subject them to general jurisdiction here.

B. Specific Jurisdiction

The Third Circuit Court of Appeals recently discussed the relevant inquiry to be made with regard to personal jurisdiction in a contract case in General Elec. Co. v. Deutz AG, No. 00-2387, 2001 WL 1338312, at *2 (3d Cir. Oct. 31, 2001)(citations omitted):

In contract cases, courts should inquire whether the defendant's contacts with the forum were instrumental in either the formation of the contract or its breach. Parties who reach out beyond [their] state and create continuing relationships and obligations with citizens of another state are subject to the regulations of their activity in that undertaking. Courts are not reluctant to find personal jurisdiction in such instances. [M]odern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity. . . .

Defendants argue that they are not subject to specific jurisdiction because Plaintiff initiated the contracts with both Defendants. However, "it is not significant that one or the other party

initiated the relationship." Id. at *3. Defendants also stress that they were not physically present in Pennsylvania during contract negotiations and that they only made a few visits to Pennsylvania with respect to the ring roller. However, it is not necessary that the contract be negotiated by persons who are physically located in Pennsylvania for there to be specific jurisdiction in this Commonwealth: "actual presence during pre-contractual negotiations, performance, and resolution of post-contract difficulties is generally factored into the jurisdictional determination. In modern commercial business arrangements, however, communication by electronic facilities, rather than physical presence, is the rule. Where these types of long-term relationships have been established, actual territorial presence becomes less determinative." Id. (citations omitted).

Both MHF and WCA have had sufficient contacts with Pennsylvania with regard to the subject matter of the Complaint that they should have "reasonably anticipate[d] being haled into court" here. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). Both Defendants entered into contracts with a Pennsylvania corporation which would entail an ongoing relationship. Cottman Transmission Sys., Inc. V. Miller, No.Civ.A. 00-cv-3283, 2000 WL 1277928, at *4 (E.D. Pa. Sept. 7, 2000) ("Although merely entering into a contract with a Pennsylvania resident is generally an insufficient basis upon which to assert

personal jurisdiction, personal jurisdiction may be established where the defendant deliberately engaged in a course of conduct designed to cultivate an ongoing relationship with the plaintiff.") (citations omitted). MHF negotiated its contract with Plaintiff electronically through Pennsylvania and its President made two trips here as part of its performance of its contractual relationship with Plaintiff. WCA also had electronic communications with Plaintiff in Pennsylvania and its President and Engineering Manager visited Plaintiff's Pennsylvania facility as part of WCA's performance of its contractual relationship with Plaintiff. Moreover, WCA's travels to Pennsylvania to repair the ring roller may be considered in this analysis, even if those visits were not contemplated when the parties entered into their contract. Cottman Transmission, 2000 WL 1277928, at *3 ("Courts may also consider contacts that occur after the contract has been executed and after a contractual dispute has arisen.").

Once Plaintiff has established the requisite minimum contacts between Defendants and the Commonwealth, Defendants have the burden to show that the assertion of personal jurisdiction would not comport with the notions of "fair play and substantial justice." Sundance Rehab. Corp. v. Senior Living Prop., LLC, No.Civ.A. 00-5217, 2001 WL 683766, at *2 (E.D. Pa. June 14, 2001). Defendants did not submit any evidence with their Motion or Memorandum of Law that the assertion of personal jurisdiction would

be unreasonable.¹ Plaintiff certainly has an interest in obtaining convenient and effective relief and Pennsylvania has an interest in providing redress for a contractual breach inflicted on its citizen. Cottman Transmission, 2000 WL 1277928 at * 5. Therefore, the Court concludes that the fairness factors support the exercise of personal jurisdiction in this case.

An appropriate Order follows.

¹Defendants faxed to the Court a courtesy copy of a Motion for Leave to File a Reply Brief. The original of said Motion was never filed with the Clerk and, therefore, Defendants' proposed Reply Brief, and its argument that the assertion of personal jurisdiction over Defendants would be unreasonable, cannot be considered in connection with the Motion to Dismiss. However, even if the Court could consider the material presented in Defendants' Reply Brief, the evidence does not demonstrate that Defendants would be unusually burdened by having to litigate this matter here or that the exercise of personal jurisdiction would otherwise be unreasonable.

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O R D E R

AND NOW, this day of November, 2001, in consideration of Defendants' Motion to Dismiss (Docket No. 2) and Plaintiff's response thereto, **IT IS HEREBY ORDERED** that the Motion to Dismiss is **DENIED**.

BY THE COURT:

John R. Padova, J.